

STATE OF MICHIGAN  
IN THE 30th JUDICIAL CIRCUIT COURT  
COUNTY OF INGHAM

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY,  
and STEVEN E. CHESTER, Director of the  
Michigan Department of Environmental Quality,

Docket No. 08-281-CE

HON. JAMES R. GIDDINGS

Plaintiffs,

v

GREAT LAKES PROPERTIES OF  
FENTON, LLC, a Michigan Limited Liability  
Company, d/b/a FENTON HEIGHTS APARTMENTS

Defendant

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John Fordell Leone (P38938)  
Assistant Attorney General  
Attorney for Plaintiffs  
Environment, Natural Resources  
and Agriculture Division  
P. O. Box 30217  
Lansing, MI 48909  
(517) 335-0694

Thomas W. Elkins (P35360)  
Elkins & Associates PLLC  
Attorney for Defendant  
8130 High Point Trail  
White Lake, MI 48386  
(313) 779-5217

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**ORDER TO PAY STIPULATED PENALTIES FOR  
CONSENT JUDGMENT VIOLATIONS**

At a session of said Court held on April 9, 2010  
PRESENT: Hon. James R. Giddings  
Circuit Court Judge

This matter, having come before the Court pursuant to Plaintiff's Motion to Enforce

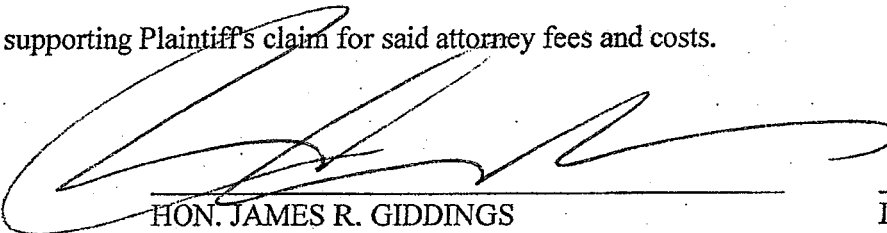
Consent Judgment, a Response by Defendant, a Reply by Plaintiff, with oral argument held on April 9, 2010, and the Court being otherwise fully advised:

**IT IS HEREBY ORDERED and ADJUDGED** that for the reasons stated on the record:

1. Plaintiff's Motion to Enforce Consent Judgment is granted. Defendant is found to have violated the October 21, 2009 Consent Judgment entered in this matter.

2. Within thirty (30) days Defendant shall to pay the sum of (\$ 300,250) *Three hundred thousand two hundred fifty dollars* as stipulated penalties for Defendant's violation of the Consent Judgment. This payment shall be made by check or money order made payable to the "State of Michigan" with a reference on its face stating "Payment ID No WTR-3112." The payment shall be delivered to the attorney for the Plaintiff at the address of record in this matter.

3. Plaintiff is also awarded ~~all costs and reasonable attorney fees~~ associated with the filing and adjudication of Plaintiff's Motion to Enforce Consent Judgment. If within 30 days a stipulated order containing the amount of costs and reasonable attorney fees to be awarded to Plaintiff has not been submitted to this Court for entry, the Plaintiff shall submit a motion with materials supporting Plaintiff's claim for said attorney fees and costs.

  
HON. JAMES R. GIDDINGS  
Circuit Court Judge

4/9/10  
Dated

STATE OF MICHIGAN  
IN THE INGHAM 30TH JUDICIAL CIRCUIT  
COUNTY OF INGHAM

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY, and  
STEVEN E. CHESTER, Director of the  
Michigan Department of Environmental  
Quality,

Docket No.08-281-CE

Hon. JAMES R. GIDDINGS

Plaintiffs,

Dept. of Attorney General  
**RECEIVED**

v.

OCT 27 2009

Great Lakes Properties of Fenton Heights,  
LLC,

NATURAL RESOURCES  
DIVISION

Defendant.

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John Leone (P38938)  
Assistant Attorney General  
Attorney for the Plaintiffs  
Environment, Natural Resources, and  
Agriculture Division  
P.O. Box 30755  
Lansing, Michigan 48909  
517-373-7540

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Thomas W. Elkins (P35360)  
Elkins & Associates PLLC  
Attorney for Defendant  
8130 High Point Trail  
White Lake, MI 48386  
313-779-5217

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**CONSENT JUDGMENT AS TO LIABILITY, REMEDIAL RELIEF, AND INITIAL  
MONETARY RELIEF**

At a session of said court held in the city of Lansing, Michigan,

on the 21 day of Oct 2009.

Present: HON. JAMES R. GIDDINGS  
Circuit Court Judge

The Parties agree that settlement of this action is in the public interest and consent to the entry of this Consent Judgment as the most appropriate means of resolving the allegations raised by Plaintiff in the Complaint filed with the Court on February 28, 2008. As evidenced by the

signatures below, the Parties agree to, and shall be bound by, the terms and findings in this Consent Judgment.

This Consent Judgment requires the completion of specified remedial activities and payment of certain administrative fees and fines by Defendant pursuant to Part 31, Water Resources Protection, MCL 324.3101 *et seq.* ("Part 31"), and, Part 41, Sewerage Systems, MCL 324.4101 *et seq.* ("Part 41"), both of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended; and the Safe Drinking Water Act, 1976 PA 399, as amended, MCL 325.1001 *et seq.* ("SDWA"); and the rules and regulations promulgated under each statute. This Consent Judgment does not resolve certain signage and fencing issues (*see* Paragraph VI A. 9) and the amount of civil penalties, costs, and attorney fees that this Court may award after a hearing on those matters (*see* Paragraph III B.6).

NOW, THEREFORE, pursuant to the consent of the Parties and the findings of this Court, it is hereby ORDERED, ADJUDGED AND DECREED:

#### **I. JURISDICTION AND VENUE**

A. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Section 3115(1) of Part 31 of the NREPA, MCL 324.3115(1); Sections 4110 and 4111 of Part 41 of the NREPA, MCL 324.4110 and 324.4111; Section 22 of the SDWA, MCL 325.1022; and Section 605 of the Revised Judicature Act (RJA), MCL 600.605. Defendant conducts business within the State of Michigan. This Court thereby has personal jurisdiction over the Defendant. Defendant waives all objections and defenses that it may have with respect to the jurisdiction of the Court.

B. Venue is appropriate pursuant to Section 3115(1) of Part 31 of the NREPA, MCL 324.3115(1); Section 4110 of Part 41, MCL 324.4110; and Section 22 of SDWA, MCL 325.1022.

C. The Court determines that the terms and conditions of this Consent Judgment are reasonable, adequately resolve the environmental issues raised in the Complaint, and properly protect the interests of the people of the State of Michigan.

D. The Court retains jurisdiction over the Parties and subject matter of this action in order to enforce this Consent Judgment and to resolve disputes arising under it, including disputes over the construction, execution, or implementation of this Consent Judgment.

## **II. PARTIES BOUND**

A. Plaintiff, Michigan Department of Environmental Quality ("MDEQ"), is a principal department within the Executive Branch of the State of Michigan pursuant to Executive Order 1995-18. The MDEQ is the state agency mandated to conduct enforcement and accomplish compliance with the NREPA to provide for the protection of the natural resources of the state from pollution, impairment, and destruction and with the SDWA to supervise and control the public water supplies and to protect the public health. MCLs 324.101, 324.301, 324.501, 325.1003, 325.1022; and Executive Orders 1973-2, 1976-8, and 1995-18.

B. Plaintiff, Steven E. Chester, is the Director of the MDEQ, appointed by Governor Jennifer M. Granholm.

C. Defendant, Great Lakes Properties of Fenton Heights, LLC ("Defendant"), is a Limited Liability Company, under the laws of the State of Michigan. Defendant owns and operates a 24-unit condominium complex and associated surrounding property, known as Fenton Heights Apartments (the "Property"), located at 12911 Fenton Heights Boulevard, Fenton, Livingston County, Michigan 48430. Defendant provides both a sanitary (human waste) sewerage system, and a drinking water supply system to the condominium complex and to one privately owned domicile adjacent to the Property.

D. The provisions of this Consent Judgment shall be binding on the Parties, their officers, agents, successors and assigns. No change or changes in the ownership or other legal status of the Defendant, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter Defendant's responsibilities under this Consent Judgment unless expressly agreed to in writing by the MDEQ as an amendment to this Consent Judgment.

Defendant shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Property and shall also provide a copy of this Consent Judgment to any prospective owners or successors prior to the transfer of any ownership rights.

E. Defendant shall provide a copy of this Consent Judgment to all contractors, subcontractors, and consultants that are retained to conduct any portion of the compliance activities to be performed pursuant to this Consent Judgment, and to the employees overseeing environmental management of the Property, within three calendar days of the effective date of such retention.

F. Notwithstanding the terms of any contract(s) that Defendant may enter with respect to the compliance activities to be performed pursuant to this Consent Judgment, Defendant is responsible for compliance with the terms of this Consent Judgment and shall ensure that its contractors, subcontractors, consultants, and employees perform all compliance activities in full conformance with the terms and conditions of this Consent Judgment.

### **III. FINDINGS AND STATEMENT OF PURPOSE**

A. It is this Court's finding of fact and conclusion of law that since the groundwater discharge permit, No. MG00-0081, expired on April 1, 2005, and continually to date, the Defendant is liable for violations of Part 31 and Part 41 of the NREPA, and of the SDWA, for:

- 1) Directly or indirectly discharging into the surface waters and groundwaters of the state waste effluent from Defendant's Sewerage System without the requisite permit; failing to employ a certified wastewater treatment operator to oversee the

operation and maintenance of its Sewerage System, including its holding lagoon; without having established the requisite escrow account or other financial instrument; failing to pay applicable permit fees and late penalties; and otherwise failing to operate and maintain its Sewerage System in compliance with Parts 31 and 41 of the NREPA.

2) Maintaining ownership of a public water supply system, without having established the requisite escrow account; failing to pay administrative fees and fines invoiced for prior SDWA violations; failing to employ a certified drinking water operator to oversee the operation and maintenance of its Public Water Supply from at least July 15, 2005 until April 2006; failing to comply with the SDWA permit No. 081126 issued on October 29, 2008, by the MDEQ; and otherwise failing to operate and maintain its privately owned public water supply system in compliance with the SDWA.

B. In entering into this Consent Judgment, it is the mutual intent of the Parties that Defendant will do the following:

1. Prevent all unlawful discharges to waters of the state;
2. Assure compliance with any Part 31/National Pollutant Discharge Elimination System (NPDES) permit, Groundwater permit, and Part 41 permit issued in the future by the MDEQ to Defendant for activities to be conducted at the Property; and assure compliance with the SDWA permit No. 081126 issued on October 29, 2008, by the MDEQ to Defendant for activities to be conducted at the Property;
3. Evaluate the design and operation of Defendant's Sewerage System and its drinking water system, as required by the statute, rules, and regulations of the State of Michigan and the United States, and to otherwise comply with all the requirements of Parts 31 and 41 of the NREPA, and the SDWA, including the SDWA permit No. 081126 issued on October 24, 2008, for the protection of the waters of the state, the public health, and drinking water supplies;

4. Develop and submit to the MDEQ a plan for Defendant's implementation of any alteration, modification, addition, or upgrade of any kind to the Defendant's Sewerage System necessary to comply with Part 31 and/or Part 41 of the NREPA
5. Reimburse MDEQ for costs of surveillance and enforcement as well as for reasonable attorney's fees; and
6. Pay a civil fine, costs, and attorney fees as determined by the Court following an evidentiary hearing thereon, commensurate with the violations alleged in the Complaint and in the future pay any applicable stipulated fines as required by this Consent Judgment upon Defendant's failure to meet its obligations under this Consent Judgment.

#### **IV. DEFINITIONS**

- A. "Party" means the Plaintiffs or Defendants. "Parties" means the Plaintiffs and Defendants.
- B. "Water Bureau" or "WB" means the Bureau of the MDEQ and any successor entities charged with implementing Part 31 of the NREPA.
- C. "Consent Judgment" means this Consent Judgment, and any attached exhibits and/or appendix, any work plan, proposal, or other documents approved by the MDEQ pursuant to Section VI of this Consent Judgment.
- D. "Document(s)" means any submission required to be submitted by the Defendant to the MDEQ pursuant to this Consent Judgment.
- E. "Alteration" means the construction of any modification or addition to an existing Sewerage System which changes the system process or system capacity.



F. "Sewerage System" means a system of pipes and structures including pipes, channels, conduits, manholes, pumping stations, sewage or waste treatment works, diversion and regulatory devices, outfall structures, and appurtenances, collectively or severally, actually used or intended for use to serve the public for the purpose of collecting, conveying, transporting, treating, or otherwise handling sanitary sewage or other industrial liquid wastes that are capable of adversely affecting the public health.

G. "Drinking Water System" means a system of pipes and structures through which water is obtained and distributed, including but not limited to wells and well structures, intakes and cribs, pumping stations, treatment plants, storage tanks, pipelines and appurtenances, or a combination thereof, actually used or intended for use for the purpose of furnishing water for drinking or household purposes.

H. Unless otherwise defined herein, all terms used in this document, which are defined in pertinent parts of the NREPA, SDWA, and associated administrative rules and/or permits or the Federal Clean Water Act, shall have the same meaning in this document as in those pertinent statutes, rules, and/or permits.

## **V. COMPLIANCE WITH STATE AND FEDERAL LAWS**

All actions required to be taken pursuant to this Consent Judgment shall be undertaken in accordance with the requirements of all applicable state and federal statutes, rules, and regulations including the procurement of all necessary permits and approvals.

## **VI. COMPLIANCE PROGRAM**

### **A. Sanitary (Human Waste) Sewerage System**

Defendant shall undertake all of the following corrective activities by the specified dates, to accomplish compliance with Part 31 and Part 41 of the NREPA:

1. On or before October 31, 2009, Defendant shall submit to the MDEQ-WB, Permits Section, all additional Sewerage System permit application information (including all detailed diagrams, drawings, and reports) requested in the February 13, 2009 letter from MDEQ to Defendant (Attachment A).
2. On or before October 31, 2009, Defendant shall submit to the MDEQ-WB, Lansing District Supervisor in accordance with Section XI. Notices, documentation demonstrating that a properly certified sanitary (human waste) wastewater system operator, qualified to operate the Defendant's Sewerage System, is in responsible charge of the Defendant's Sewerage System, in compliance with: (1) Section 3110 of Part 31 of the NREPA, MCL 324.3110; (2) Michigan Administrative Code (MAC) Rules 52 and 53, promulgated under Part 41 of the NREPA, R 299.2952 and R 299.29955; and (3) all other applicable statutes, rules, and regulations. The Defendant shall operate and maintain the Defendant's Sewerage System in compliance with all applicable statutes, rules, and regulations.
3. Within 365 days from the date of entry of this Consent Judgment, Defendant shall submit to the MDEQ, for review and approval, a work plan for completion of a hydrogeologic study pursuant to Rule 2221, promulgated under Part 31 of the NREPA, MAC R 323.2221, designed at a minimum: (1) to determine the subsurface lithology beneath the Property, (2) to determine the groundwater flow direction and vertical and horizontal hydraulic conductivity in the groundwater located beneath the Property, (2) to identify interconnections between aquifers located on or beneath the Property; (3) to identify and quantify the concentration level of chemical constituents in the groundwater located beneath the Property, using analytical methods approved

by United States Environmental Protection Agency ("USEPA"), (4) regional subsurface lithology and groundwater flow direction, (5) compare regional lithology and groundwater flow direction to that of the property, and confirm/refute venting of groundwater to Denton Creek.

4. Within 90 days of the MDEQ's written approval of the hydrogeologic study work plan, the Defendant shall execute to completion the MDEQ-approved hydrogeologic study work plan.
5. Within 150 days of the MDEQ's written approval of the hydrogeologic study work plan, the Defendant shall submit to the MDEQ for review and approval the results of the MDEQ-approved hydrogeologic study, including all field and laboratory data, and an evaluation of the site hydrogeologic conditions.
6. Defendant shall obtain a Part 41 construction permit for any proposed alterations of Defendant's Sewerage System as required under Rule 33, promulgated under Part 41 of the NREPA, MAC R 299.2933.
7. Defendant, prior to a submission of any Part 41 construction permit application, or even if no Part 41 permit is required, shall submit to the MDEQ for review and approval, a detailed basis of design for any proposed alterations of Defendant's Sewerage System, as required under Rule 35, promulgated under Part 41 of the NREPA, MAC R 299.2935.
8. Within 30 days after the MDEQ issues written approval for any proposed alterations to Defendant's Sewerage System, if such MDEQ-approved proposed alterations do not require the use of the existing surface water discharge pipeline, Defendant shall permanently (but reversibly) weld shut a cap on the outfall end of the surface water

discharge pipeline to ensure this pipeline shall not be used for any purpose whatsoever. It is understood that this pipeline may in the future be proposed as part of a new wastewater discharge system design submitted as part of a new wastewater discharge (NPDES) permit application.

9. Within 30 days after entry by this Court of this Consent Judgment as to Liability, Remedial Relief, and Initial Monetary Relief, the MDEQ shall file a motion in this Court requesting the relief MDEQ seeks pursuant to Rule 2218(2)(d), promulgated under Part 41 of the NREPA, MAC R 323.2212, with respect to the signage and fencing to surround the area on Defendant's property where the lagoon that is part of Defendant's Sewerage System is located.

10. Within 90 days after entry by this Court of this Consent Judgment as to Liability, Remedial Relief, and Initial Monetary Relief, Defendant shall accomplish to completion one of the following two options, (a) or (b), to satisfy the requirements in Rule 41, promulgated under Part 41 of the NREPA, MAC R 299.2941:

(a). Form a user association and Defendant shall be named therein as the Principal Owner, and Defendant shall establish a perpetual funding mechanism in the form of an escrow account, letter of credit, or other financial instrument acceptable to the MDEQ to maintain available financing to ensure the continuing uninterrupted operation and maintenance of Defendant's Sewerage System; and Defendant shall establish a "covenant running with the land" that shall be legally binding on all users of Defendant's Sewerage System and that may establish user fees sufficient to cover the Defendant's Sewerage System operational and maintenance costs.

(b). Permanently disconnect and terminate all wastewater connections that in any way service any persons residing outside the Property, including the wastewater connections that service the adjacent residential home (formerly owned by Gerald Schafer) located adjacent to the Property, and in addition fully withdraw and otherwise terminate all condominium deeds and plans on file with Tyrone Township and Livingston County, Michigan as necessary in order to legally terminate in full the condominium status of the Property.

**B. Drinking Water System**

Defendant shall undertake all of the following corrective activities by the specified dates to accomplish compliance with the SDWA:

1. On or before October 31, 2009, the Defendant shall properly operate and maintain the drinking water system, as required under the SDWA and applicable rules and regulations, including, but not limited to the following: accomplishing full compliance with all requirements of SDWA Construction Permit No W081126; accomplishing full compliance with all terms to resolve all violations identified in the SDWA Violation Notice dated April 21, 2009 (Attachment B); collection of drinking water samples; submission of annual pumpage reports; submission of lead and copper reports; preparation and distribution of annual Consumer Confidence Reports ("CCRs"); and submission of signed CCR certification forms according to the appropriate schedules set forth in the SDWA and the rules promulgated thereunder.
2. On or before October 31, 2009, Defendant shall establish an escrow account to ensure the proper operation and maintenance of the drinking water system, in accordance with Section 10 of the SDWA. After a five-year period during which both the escrow

fund is established and maintained as required under the SDWA and the Defendant's Drinking Water System is in operation in compliance with the SDWA, Defendant may request the escrow fund requirements be terminated. The DEQ shall not unreasonably deny this request.

3. The Defendant shall pay all administrative fees and fines, as listed below:

- 2009 Community Water Supply fee in the amount of \$313.47 pursuant to Invoice No. 518837.
- Administrative fine in the amount \$200 pursuant to Invoice No. 254342.
- Administrative fines in the amount \$1,000 pursuant to Invoice No. 269867.
- Administrative fines in the amount \$2,600 pursuant to Invoice No. 322458.
- Administrative fine in the amount \$200 pursuant to Invoice No. 378099.

## **VII. EMERGENCY RESPONSE**

A. In the event of a discharge to surface waters or other spill of polluting materials to the ground or water attributable to Defendant's activities, Defendant shall meet the requirements under Section 3112a of Part 31 and undertake the following measures:

1. Upon the discovery of a discharge of any waste, wastewater, or other spill of polluting materials to the ground or water, Defendant shall take immediate corrective measures to contain any losses of waste, wastewater, or other polluting material to prevent any further discharge or spill to waters of the state.
2. Defendant shall immediately upon discovery of any discharge of waste, wastewater, or other polluting material to surface waters of the state notify the MDEQ-WB, Lansing District Office. Emergency notification shall be as follows:

- a. Monday through Friday, during the hours of 8:00 AM to 5:00 PM, contact the MDEQ-WB, Lansing District Office District Office at 517-335-6010.
  - b. At all other times, contact the Pollution Emergency Alerting System (PEAS) Hotline at 800-292-4706.
3. In addition to the verbal notification requirement above, Defendant shall provide written notification to the MDEQ-WB, Lansing District Supervisor and the Chief of MDEQ-WB's Enforcement Unit within ten calendar days following the discovery of any discharge of waste, wastewater, or other spill of polluting materials to the ground or water.  
The written notification shall include:
  - a. a description and cause of the discharge or other spill, including an estimate of the discharge volume, and any analytical data in the possession of the Defendant related to the discharge or spill;
  - b. the estimated duration of the discharge or other spill, including the date and time of the commencement and cessation of the discharge to the extent known;
  - c. the corrective measures that were or will be implemented to prevent a future occurrence; and
  - d. copies of all pertinent records maintained pursuant to Section IX of this Consent Judgment.

### **VIII. REPORTING**

Defendant shall verbally report any violation of this Consent Judgment, excluding discharges to surface waters or other spill of polluting materials to the ground or water reported

in accordance with Section VII above, to the MDEQ-WB, Lansing District Supervisor not later than the close of the next business day following detection of such violation, and shall provide a written report within fourteen business days after detection of such violation to both the MDEQ-WB, Lansing District Supervisor, and the MDEQ-WB, Enforcement Unit Chief. The written report shall include a detailed description of the violation, the precise cause or causes of the violation, a detailed description of any action taken or proposed to correct the violation, and a schedule for the implementation of any proposed corrective action. Defendant shall report any anticipated violation of this Consent Judgment to the MDEQ-WB, Lansing District Supervisor in advance of the relevant deadlines whenever reasonably practicable.

#### **IX. RECORD RETENTION AND ACCESS TO INFORMATION**

A. Until five years after entry of this Consent Judgment, Defendant shall retain, and shall instruct its contractors, agents, and representatives to preserve, all copies of records and documents, including records or documents in electronic form, that this Consent Judgment requires Defendant to create or maintain.

B. Upon MDEQ request, Defendant shall provide to the MDEQ copies of all documents and information within the possession or control of Defendant, its employees, contractors, agents, or representatives that this Consent Judgment requires Defendant to create or maintain. Defendant shall not prevent its employees, contractors, agents, or representatives from discussing with MDEQ any relevant facts, except for privileged information, concerning the performance of activities undertaken pursuant to this Consent Judgment.

C. This Consent Judgment in no way limits or affects any right to obtain information held by the MDEQ pursuant to applicable laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain records or information imposed by applicable statutes, rules, regulations, or permits.



## **X. ACCESS**

A. Commencing on the date of entry of this Consent Judgment and to the extent that property covered by this Consent Judgment is owned, controlled by, or available to Defendant or successors in interest, the MDEQ as well as its authorized employees, contractors and consultants shall, upon presentation of proper credentials, have access at all reasonable times to the Property for the purpose of conducting any activity for which access is required for the implementation, monitoring, or enforcement of this Consent Judgment or the continued evaluation of Defendant's compliance with Part 31 and Part 41 of the NREPA, and the SDWA, including, but not limited to:

1. Monitoring activities taking place pursuant to this Consent Judgment;
2. Verifying any data or information submitted to the MDEQ;
3. Conducting investigations relating to discharges of potentially injurious substances at or from the Property;
4. Obtaining samples;
5. Assessing the need for corrective action or other response activities at or near the Property;
6. Assessing pollution control structures to assure the effectiveness and integrity of the structure(s);
7. Inspecting and copying non-privileged records, inspection logs, contracts and other documents maintained pursuant to this Consent Judgment;
8. Communicating with Defendant, Defendant's personnel, representatives, or consultants for the purpose of assessing compliance with this Consent Judgment;

9. Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Judgment or Part 31 and Part 41 of the NREPA, and the SDWA;
10. Assuring the protection of public health, safety, and welfare and the environment; and
11. Conducting tests and inspections pursuant to Part 31 and Part 41 of the NREPA, and the SDWA.

B. To the extent that property where activities are performed by the Defendant under this Consent Judgment is owned or controlled by persons other than Defendant, the Defendant shall use its best efforts to secure from such persons access for the Parties and their authorized employees, contractors and consultants. Defendant shall provide the MDEQ with a copy of each access agreement secured pursuant to this section. For purposes of this paragraph, "best efforts" includes, but is not limited to, providing reasonable consideration acceptable to the owner.

## **XI. NOTICES**

Except where this Consent Judgment already identifies the persons to whom a document or information is to be submitted, any submittal, notice, report, documentation, or recitation required by this Consent Judgment shall be submitted to the attention of:

For Plaintiffs: Mr. Timothy Benton, District Supervisor  
Lansing District Office  
MDEQ-WB  
4<sup>th</sup> Floor, North Tower  
P.O. Box 30242  
Lansing, Michigan 48909-7773

and Barry Selden  
Water Bureau Enforcement Unit Chief  
525 West Allegan Street

P.O. Box 30273  
Lansing, Michigan 48909-7773  
517-373-6437

For Defendant: Mr. Vincent Asmar  
Great Lakes Properties of Fenton, LLC  
32680 Northwestern Highway  
Farmington Hills, Michigan 48334

Either party may substitute others for those designated to receive such notices by providing written notice to the other party.

## **XII. REIMBURSEMENT OF COSTS AND PAYMENT OF CIVIL FINES**

A. Defendant agrees to pay to the State of Michigan a dollar-amount to be determined by the Court following an evidentiary hearing, as compensation for the costs of surveillance and enforcement, including attorney's fees, arising from past violations of Parts 31 and 41 of the NREPA and of the SWDA, as alleged in the Complaint. The amount to be paid will be included in a subsequent order of this Court to be entitled "Final Order of Judgment as to Remedial and Monetary Relief."

B. Defendant agrees to pay a civil fine of in a dollar-amount to be determined by the Court following an evidentiary hearing, as full settlement of civil liability arising from past violations of Parts 31 and 41 of the NREPA and of the SDWA, as alleged in the Complaint. The amount to be paid will be included in a subsequent order of this Court to be entitled "Final Order of Judgment as to Remedial and Monetary Relief."

C. Defendant shall pay such civil fine and costs of surveillance and enforcement by certified or cashier's checks made payable to the State of Michigan and mailed to the Michigan Department of Environmental Quality, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157 within 45 days of the date of entry of this Consent Judgment. To ensure proper

credit, all payments made pursuant to this Consent Judgment must include the Payment Identification Number **WTR-3112** on the face of the checks, or in the cover letter with the payments.

### **XIII. STIPULATED FINES**

A. The Parties stipulate to the payment of stipulated fines by the Defendant in the following manner should the Defendant violate any terms of this Consent Judgment:

1. Any failure by Defendant to comply with any compliance date in this Consent Judgment shall result in stipulated fines as follows:
  - a. \$200.00 for the first day of violation;
  - b. \$300.00 for the second consecutive day of violation; and
  - c. \$500.00 for the third consecutive day of violation and every consecutive day thereafter.
2. A failure by Defendant to comply with any other provisions of Section VI of this Consent Judgment shall result in a stipulated fine of \$250.00 per day, per violation.

B. All stipulated fines shall be paid within 30 days of Defendant's receipt of a written demand from the MDEQ. Demands for payment shall be sent via certified mail to ensure accuracy regarding the date of receipt. Failure to make any payment required under this Consent Judgment by the specified deadline constitutes a separate violation of this Consent Judgment and is subject to an interest penalty calculated in accordance with Section 600.6013 of the Revised Judicature Act, MCL 600.6013.

C. Defendant shall pay all stipulated fines and interest penalties by certified or cashier's check made payable to "State of Michigan" and mailed to the Michigan Department of Environmental Quality, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157. To

ensure proper credit, all payments made pursuant to this Consent Judgment must include the Payment Identification Number **WTR-3112** on the face of the check, or in the cover letter with the payment.

D. Defendant agrees not to contest the legality of any stipulated fines or interest penalties assessed under this section, but reserves the right to dispute the factual basis upon which MDEQ demands stipulated fines or interest penalties.

E. Liability for or payment of stipulated fines under this Consent Judgment shall not preclude the MDEQ from seeking injunctive relief or other relief to which the MDEQ is entitled for Defendant's failure to comply with other specific requirements of this Consent Judgment, or failure to comply with Part 31 or Part 41 of the NREPA, the SDWA, or any other applicable statute, rule, or regulation, except that MDEQ shall not seek additional monetary relief for any violations for which MDEQ has accepted stipulated fines under this Consent Judgment.

#### **XIV. RESERVATION OF RIGHTS**

A. With respect to any violations not expressly addressed and resolved by this Consent Judgment, the MDEQ reserves the right to pursue any other remedies to which it is entitled for any failure to comply with the requirements of any state or federal statute, rule, or regulation, including the NREPA, the SDWA, or any applicable rules or regulations.

B. This Consent Judgment does not modify in any way Defendant's responsibilities to comply with any other applicable state, federal, or local laws or regulations including the procurement of required permits and/or approvals; or with any order of this or any court, including, without limitation, any corrective action or similar requirements under Part 31 or Part 41 of the NREPA, the SDWA, or any applicable rules or regulations..

C. This Consent Judgment does not limit the rights of the Defendant or the State of Michigan against any third parties.

## **XV. GENERAL PROVISIONS**

### **A. Severability**

1. Should a court of competent jurisdiction declare any provision of this Consent Judgment to be unenforceable, the remaining provisions shall remain in effect.

2. This Consent Judgment in no way affects the Defendant's responsibility to comply with any other applicable state or federal laws or local regulations or with any order of this or any other Court including without limitation, any amendments to Part 31 or Part 41 of NREPA, the SDWA, or any applicable rules or regulations.

### **B. Settlement**

This Consent Judgment is in settlement and satisfaction of all civil claims against Defendant alleged by the MDEQ in the Complaint, with the sole exception of payments for the reimbursement of costs and/or civil fines that this Court may order pursuant to Section XII of this Consent Judgment.

## **XVI. RETENTION OF JURISDICTION**

Prior to termination of this Consent Judgment in accordance with Section XVI, below, this Court retains jurisdiction over this action to enforce the terms of this Consent Judgment, assess disputed stipulated fines, resolve all other disputes arising under its terms, and to take any action necessary or appropriate for construction, execution, or implementation of this Consent Judgment.

## **XVII. TERMINATION**

This Consent Judgment shall terminate only upon written request of Defendant and written approval from the MDEQ along with approval of this Court, through the Court's entry of a Satisfaction of Judgment. Any written request by Defendant for termination shall include a certification by Defendant that Defendant has (1) paid in full all fines, costs, and attorney fees

owed to the State of Michigan under this Consent Judgment, and (2) has not received a Notice Letter or other document from the MDEQ alleging a violation of Part 31, Part 41 of the NREPA, the SDWA or any applicable rules or regulations, or this Consent Judgment for three consecutive years. Provided that such certification is made and found to be accurate and valid, the MDEQ will not withhold agreement to terminate this Consent Judgment.

### XVIII. SIGNATORIES

The signatories to this Consent Judgment certify that they are authorized to execute this Consent Judgment and to legally bind the Parties they represent to the requirements of this Consent Judgment.

FOR DEFENDANT,

GREAT LAKES PROPERTIES OF  
FENTON, LLC:

By: 

Raad a/k/a Robert Asmar  
Great Lakes Properties of Fenton, LLC  
326890 Northwestern Highway  
Farmington Hills, MI 48334  
Dated: 9/30/09

By: 

Thomas W. Elkins (P35360)  
Attorney for Defendant  
Elkins & Associates PLLC  
Dated: 9/30/09

FOR PLAINTIFFS,

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY:

By: 

Steven E. Chester, Director  
Michigan Department of  
Environmental Quality  
Dated: 10-15-09

MIKE COX,  
Attorney General

By: 

John Fordell Leone (P 38938)  
Assistant Attorney General  
Attorney for Plaintiffs  
Environment, Natural Resources,  
And Agriculture Division  
Dated: October 5, 2009

IT IS SO ORDERED, ADJUDGED AND DECREED:

**JAMES R. GIDDINGS**

HON. JAMES R. GIDDINGS  
Circuit Court Judge

Ex. A





JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



STEVEN E. CHESTER  
DIRECTOR

February 13, 2009

Mr. Vincent R. Asmar  
Great Lakes Properties of Fenton, LLC  
32680 Northwestern Highway  
Farmington Hills, Michigan 48334

Dept. of Attorney General  
**RECEIVED**

FEB 17 2009

NATURAL RESOURCES  
DIVISION

Dear Mr. Asmar:

SUBJECT: Fenton Heights Apartments, Tyrone Township, Livingston County, MI

The Department of Environmental Quality (DEQ), Water Bureau, has received your application for a R2210(y) Groundwater Discharge Permit on December 15, 2008. Based on the information provided in the application, it has been determined that it cannot be considered administratively complete at this time. Please address the DEQ's concerns below by submitting to the DEQ, specifically the Groundwater Permits Unit (GWPU), the following requested information so that the application can be further reviewed for completeness and consideration of this facility for permit issuance can proceed:

- As described in the application narrative that was provided, the 5.79 acre holding pond/lagoon is proposed to receive the post-mechanical treatment discharge and is apparently proposed to be utilized as a single-cell seepage lagoon. The proposed design may be approvable with a post-mechanical treatment discharge effluent compliance point located prior to discharge into the lagoon. For this design intent, the DEQ must have detailed information regarding the wastewater treatment plant (WWTP) that is proposed for the mechanical treatment of the effluent prior to discharge into the proposed seepage lagoon. The GWPU currently has very limited information regarding the basis of design of the proposed WWTP, and has no information detailing when it was built, how it was constructed, or any reports of its historic effluent testing results. Furthermore, the GWPU does not have detailed information about its current design and cannot deduce from the application whether or not the proposed WWTP is currently in operation. Please provide the GWPU with detailed basis of design information about this WWTP, as well as detailed system diagrams and drawings of its current specifications and a thorough description of its proposed effluent treatment capabilities when it was originally constructed.
- Information that is currently available pertaining to the current condition of this proposed WWTP has not been made available to the GWPU. Information obtained during past site inspections by the Lansing District staff indicates that this proposed WWTP has become dilapidated, and likely does not operate as originally designed. If this WWTP is proposed to be used as the method of

February 13, 2009

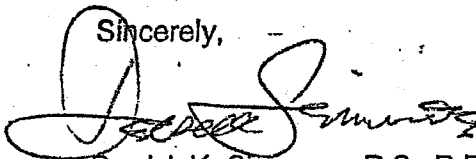
- effluent pretreatment, as described in the application, the GWPU must have a detailed report of the systems current condition, its structural integrity, a report of its current deficiencies, and some assurance that it can be upgraded to meet the limits that may be imposed in a R2210(y) permit, if issued, for this facility.

Due to the fact that the proposed seepage lagoon is located approximately 50 feet south of Denton Creek, and that the discharge from proposed seepage lagoon may immediately vent into Denton Creek after seeping into the ground, a request for an analysis of this potential loading to Denton Creek (and its watershed) was made to the DEQ Surface Water Assessment Section. Based on their evaluation, conclusions, and recommendations to the GWPU on the potential impacts of this discharge to this surface water body, the GWPU anticipates the following proposed effluent limits would be required for this facility's proposed discharge permit:

pH Minimum – 5.5  
pH Maximum – 10.0  
Total Inorganic Nitrogen (TIN) – 10.0 mg/l  
Sodium – 150 mg/l  
Chloride – 250 mg/l  
Phosphorus – 1.0 mg/l

Please provide this additional requested information within 30 days of the receipt of this letter in order to continue the review of this application and to further consideration of this facility for the issuance of the requested R2210(y) permit. If you should have any questions, please do not hesitate to contact me.

Sincerely,



Derrick K. Simmons, R.S., R.E.H.S.  
EQA/Project Coordinator  
Groundwater Permits Unit  
Permits Section  
Water Bureau  
517-373-4014

cc: Mr. John Fiero, Boss Engineering  
Mr. John Leone, Attorney General's Office  
Ms. Karen Boase, DEQ  
Mr. James Janiczek, DEQ  
Mr. Douglas Thompson, DEQ  
Mr. Timothy Benton, DEQ  
Mr. Chris Babcock, DEQ  
Mr. Michael Bray, DEQ

Ex. B



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING DISTRICT OFFICE



STEVEN E. CHESTER  
DIRECTOR

April 21, 2009

Mr. Vincent Asmar, Owner  
Great Lakes Properties of Fenton, LLC  
32680 Northwestern Highway  
Farmington Hills, Michigan 48334

**VIOLATION NOTICE**

Dear Mr. Asmar:

SUBJECT: Water Supply – Fenton Heights Apartments – WSSN: 02274  
Violation Notice– Firm Capacity and Well Appurtenances

On April 2, 2009, the Department of Environmental Quality (DEQ), Water Bureau (WB) staff inspected the Fenton Heights Apartments (FHA) drinking water supply, located at Fenton Heights Road, Fenton, Michigan 48430, owned and operated by Great Lakes Properties of Fenton, LLC (GLPF). The purpose of the inspection was to determine the compliance status of GLPF's drinking water system with:

- (1) the Safe Drinking Water Act, 1976 PA 399, as amended (Act 399), and administrative rules promulgated thereunder (Rules 325.10101-R325.12820),
- (2) the Public Health Code, 1978 PA 368, as amended (Act 368) and administrative rules promulgated thereunder (Rules 325.1601- 325.1711),
- (3) the 10-page Act 399 construction permit No. W081126 issued on October 24, 2008 (Act 399 permit) (copy enclosed), and
- (4) the approved construction plans and specifications submitted by Boss Engineering (received by DEQ on October 24, 2008 and dated September 9, 2008).

Please be advised that GLPF has failed to comply with the requirements of Act 399 and the rules promulgated thereunder, and has failed to comply with Act 399 construction permit No. W081126 for the FHA drinking water system. GLPF has committed the following violations:

- Failed to provide a minimum of two wells and sufficient capacity to meet demands with the largest well removed from service.
- Failed to provide a casing vent constructed to prevent the entrance of contaminants into the well.
- Failed to provide appurtenances to allow pumping to waste without interrupting normal service.
- Failed to provide proper sampling taps for each well.
- Failed to provide a water meter.

- Failed to provide a chemical injection tap and electrical outlet energized with the well pump motor.
- Failed to request Department approval of changes to approved construction plans.

Pursuant to Rule 325.11205 (1), where groundwater is the sole source of water supply, a minimum of 2 wells, with separate pumping units, shall be provided. Also, Rule 325.11204 (1) (b), promulgated under Act 399, requires that a Type I public water supply shall provide firm capacity from an approved groundwater supply where firm capacity equals the flow with the largest producing well out of service. And Rule 325.11011 (1), promulgated under Act 399, requires that a pumping facility shall have sufficient capacity to meet the service area demands with the largest unit removed from service.

Pursuant to Rule 325.10828 (1) (a), casing vents shall be provided on all wells and constructed to prevent the entrance of contaminants into the well.

Pursuant to Rule 325.10829 (1) (c), each well shall be equipped to allow pumping to waste without interrupting normal service in the distribution system. Also, Rule 325.11012, promulgated under Act 399, requires that each unit of a pumping facility shall be provided with a means to remove it from service without interrupting service to the distribution system.

Pursuant to Rule 325.10828 (2), provisions shall be made for collection of water samples by installation of a proper sampling tap in a convenient location as close to each well as possible.

Pursuant to Rule 325.10829 (1) (a), each well shall be equipped with a meter or other acceptable means to measure the volume of water produced.

Pursuant to Rule 325.10829 (1) (b), each well shall be provided with an electrical outlet energized with the pump motor, chemical injection taps, and space necessary for the addition of chemicals so that treatment equipment can be readily connected to the well discharge line in the event the department requires chemical treatment to protect the public health.

Pursuant to Rule 325.11309 (1), changes from approved plans or specifications or other pertinent information which would affect the well or water main isolation or capacity, flow, treatment, or operation of the waterworks system, or portion thereof, shall be submitted to the department and approval obtained before construction of the changes.

In addition to the above Act 399 violations, GLPF has also failed to comply with the requirements of Act 368, and administrative rules promulgated thereunder. GLPF failed to repair a broken electrical conduit to prevent entrance of contaminants to the well. Pursuant to Rule 325.1641, an above-grade connection into the top or side of a well casing shall be constructed to exclude dirt or other foreign matter. Also, Rule 325.1653 requires that a pump shall be constructed so that there are no unprotected openings into the interior of the pump or well casing.

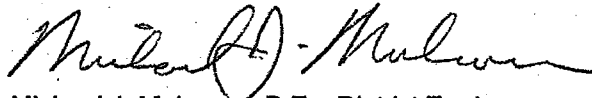
The violations identified in this Violation Notice are continuing. The violations identified in this Notice were previously addressed in the WB's correspondence dated December 14, 2007 and in other correspondences sent to GLPF prior to issuance of the Act 399 permit. GLPF must take immediate action to achieve and maintain compliance with the terms and conditions of Act 399 and Act 368, the rules promulgated thereunder, and the Act 399 construction permit No. W081126.

Mr. Vincent Asmar  
April 21, 2009  
Page 3

Compliance with the terms of this Notice does not relieve GLPF of any liability, past or present from the failure to meet the conditions specified in the Act 399 and Act 368, the rules promulgated thereunder, and the Act 399 construction permit No. W081126.

The DEQ has referred this matter to the Department of Attorney General for enforcement actions for all violations observed to date and any violations that occur in the future. This includes a civil action seeking fines, enforcement costs and injunctive relief.

Sincerely,



Michael J. Mulcrone, P.E., District Engineer  
Field Operations Division  
Water Bureau  
517-335-6118

MJM:SMB

Enclosure

cc: Mr. Bob Stucker, Certified Operator  
Mr. John Fiero, P.E., Boss Engineering  
Mr. James Layman, James Layman Well Drilling  
Mr. John Leone, Assistant Attorney General  
Ms. Karen Boase, Enforcement Unit, WB  
Livingston County Health Department